

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JERRY FLAGG,

No. C 06-930 SBA

Plaintiff,

ORDER

v.

JO ANNE B. BARNHART, Commissioner of
Social Security,

Defendant.

On August 9, 2006, the parties informed the Court that the Commissioner of Social Security was unable to locate Plaintiff's claim file. Thus, pursuant to the stipulation of the parties, the Court ordered that this case be remanded pursuant to sentence 6 of 42 U.S.C. § 405(g) for further proceedings. The Appeals Council was ordered to remand the case to an Administrative Law Judge for reconstruction of the administrative record and for a *de novo* hearing. [Docket No. 11].

On November 2, 2006, Defendant notified this Court that Plaintiff's claim file had been located and the tape recording of his original hearing transcribed. According to Defendant, "the need for remand to reconstruct the file or for a new hearing is now moot." Thus, Defendant requests that the Court vacate the remand and reopen the case. Further, Defendant answers Plaintiff's complaint and asserts affirmative defenses. [Docket No. 12]. The administrative transcript has been filed with this Court.

Plaintiff opposes Defendant's request, arguing that Defendant failed to comply with the Court's order: "[i]nstead, the Appeals Council used the Court's remand to obtain additional time to search for the file and prepare an Answer to the Plaintiff's Complaint." Plaintiff seeks what was previously ordered – a new hearing and decision by an ALJ. [Docket No. 14].

1 This Court finds Plaintiff's argument to be without merit. The sole reason for the remand
2 was the fact that the Commissioner was previously unable to locate the file. Because the file has
3 been located, proceeding with a new hearing would be an unnecessary waste of resources.

4 Accordingly, IT IS HEREBY ORDERED THAT the remand is VACATED and this case is
5 REOPENED. Docket No. 12 shall constitute Defendant's Answer to Plaintiff's Complaint.

6 IT IS FURTHER ORDERED THAT, in accordance with this Court's Social Security
7 Procedural Order, Plaintiff shall serve and file a motion for summary judgment within **thirty days** of
8 the date of this order. Defendant shall serve and file any opposition or counter-motion within thirty
9 days of service of Plaintiff's motion. Plaintiff may serve and file a reply within fourteen days of
10 service of Defendant's opposition or counter-motion.

11 IT IS SO ORDERED.

12
13 Dated: November 15, 2006


SAUNDRA BROWN ARMSTRONG
United States District Judge